

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 37
ARC 15/09**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF applications for stay and security for
costs

BETWEEN LUCY HAMON
Plaintiff

AND COROMANDEL INDEPENDENT
LIVING TRUST
Defendant

Hearing: by memoranda of submissions filed on 18 and 31 March 2010

Judgment: 31 March 2010

INTERLOCUTORY JUDGMENT NO 2 OF CHIEF JUDGE GL COLGAN

[1] By a judgment¹ dated 9 March 2010, I stayed execution of the Employment Relations Authority's costs' determination on conditions including that, by 1 May 2010, the plaintiff pays the sum of \$10,000 into court.

[2] The plaintiff has now applied for an extension of the time to make that payment to 1 July 2010.

[3] The defendant opposes this application on two broad grounds. The first is that the plaintiff has provided no evidence in support of her contention that, although she cannot make arrangements to pay this sum by 1 May, she is hopeful that she can do so by 1 July. The second broad ground of opposition is that the plaintiff's present application is, in effect and de facto, an appeal to which the plaintiff is not entitled.

¹ [2010] NZEMPC 20.

[4] Addressing the second issue first, I am satisfied that s 221 of the Employment Relations Act 2000 empowers the Court, in a proper case, to make an order such as the plaintiff seeks. This provides materially:

221 Joinder, waiver, and extension of time

In order to enable the Court ... to more effectually dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, ... on the application of any of the parties, and upon such terms as it thinks fit, by order,—

...

(c) subject to section 114(4), extend the time within which anything is to or may be done; ...

[5] There is no question of s 114(4) being at issue in this case.

[6] The plaintiff's case is that in her financial circumstances, as were previously before the Court, she will need to apply for a loan to raise the sum in issue. The plaintiff points out that the current end of the financial year delays such processes and that general economic circumstances will make it more difficult to borrow money. She says that she has the prospect of obtaining the required funds but that these will not be available until the end of June 2010.

[7] There are two grounds that persuade me that it is just to grant the extension for the fulfilment of the security condition as Ms Hamon seeks. The first is the statutory requirement in s 221 that this may enable the Court to more effectually dispose of the proceeding before it on its substantial merits and equities. There is a real risk that Ms Hamon's challenge will not be able to be heard on its merits if the extension is not granted.

[8] The second consideration is that although, before delivering judgment on 9 March 2010, I had very comprehensive evidence and submissions, Ms Hamon did not have an opportunity to be heard on the question of how long it might take her to raise the sum of \$10,000 if this were to be a condition attaching to a stay. Granting her current application and extending the period by two months has now provided that opportunity to her and I do not consider that the resultant delay is so great as to prejudice the defendant.

[9] For these reasons, the orders set out in paragraph A at the commencement of the first interlocutory judgment of 9 March 2010 are varied by substituting for the date 1 May 2010, the date 1 July 2010.

GL Colgan
Chief Judge

Judgment signed at 4.30 pm on Wednesday 31 March 2010